

## Chapter 118

### **TELECOMMUNICATIONS<sup>1</sup>**

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<sup>2</sup> **Cross references:** Utilities, ch. 126.

## ARTICLE I. IN GENERAL

**Secs. 118-1--118-30. Reserved.**

## ARTICLE II. CABLE TELEVISION FRANCHISING REGULATIONS<sup>3</sup>

### **Sec. 118-31. Definitions<sup>4</sup>.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Additional and auxiliary service* means service other than service provided by the grantee to the subscriber on a monthly basis and for which the subscriber pays a set fee.

*Basic service* means subscriber services provided by the grantee, including the delivery of broadcast signals and programming originating over the cable system, covered by the regular monthly charge paid by all subscribers.

*Board* means the city and any legally appointed or elected successor or agency.

*Cable television channel* means a frequency band six MHz in width within which a standard television broadcast signal is delivered by cable to a subscriber terminal.

*Cable television system, cable system* and *system* mean any network of cables or optical, electrical or electronic equipment used for the purpose of transmission of electrical impulses of television, radio and other intelligences, either analog or digital, for sale or use by the inhabitants of the city.

*City* and *grantor* mean the City of Evansville or the area within the boundaries constituting the City of Evansville.

*Discrete cable television channel* means a signaling path provided by a cable television system to transmit signals of any type to specified subscriber terminals within the cable television system.

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<sup>3</sup> **Cross references:** Utilities, ch. 126.

<sup>4</sup> **Cross references:** Definitions generally, § 1-2.

*FCC* means the Federal Communications Commission and any legally appointed or elected successor.

*Franchise area* means the city or the area within the boundaries constituting the city.

*Grantee* means any person to whom a franchise is granted by the city under this article, and the lawful successor or assignee of such person.

*Gross subscriber receipts* means any and all compensation received by a grantee for the provision of basic service and pay television service, excluding any and all tax on such revenue, including sales tax.

*Headend* means the land, electronic processing equipment, antennas, tower, building and other appurtenances normally associated with and located at the starting point of a cable television system, excluding a studio.

*Reasonable notice*, unless otherwise specified, means the provision of notice of contemplated action delivered at least 72 hours prior to such action.

*Street* includes all streets, roadways, highways, avenues, lanes, alleys, courts, places, squares, curbs, sidewalks, easements, rights-of-way or other public ways in the city which have been or may hereafter be dedicated and open to public use, or such other public property as designated by law.

*Subscriber* means a purchaser of any service delivered by a grantee as basic service and/or additional and auxiliary service pursuant to a franchise and subscriber fee, and shall also include all persons who are not required to pay a fee but legally receive any service delivered by a grantee pursuant to a franchise granted under this article.  
(Code 1986, § 15.01)

## **Sec. 118-32. Violations by grantee; penalty; interruption of service.**

(a) After notice and hearing, the city may subject a grantee under this article to a forfeiture if such grantee fails to provide the service, obligations and/or duties specified in this article or comply with any applicable city regulation. A grantee under this article is not responsible for failure to provide service, obligations and/or duties when caused by acts of God, strikes, governmental or military action or other conditions beyond its control.

(b) Upon interruption of service, except for acts of God, strikes, governmental or military action or with express prior permission of the city, the following shall apply:

(1) Over 48 and less than 72 hours, a ten percent rebate of one month's fees for all affected subscribers.

(2) Over 72 hours, a 20 percent rebate of one month's fees for all affected subscribers.

(3) A full month's rebate for any month in which one-half or more of the service is interrupted.

(c) If a grantee under this article violates any provision of this article, it shall forfeit, together with the costs of prosecution, a sum of not less than \$50.00 and not more than \$500.00 for each violation.

(Code 1986, § 15.25)

**Sec. 118-33. Rights granted by franchise.**

(a) Any franchise granted under this article shall give to a grantee the right and privilege to construct, erect, operate, modify and maintain in, upon, along, across, above, over and under streets which have been or may hereafter be dedicated and open to public use in the city, towers, antennas, poles, cables, electronic equipment and other network appurtenances necessary for the operation of a cable television system in the city, utilizing, wherever possible, existing facilities, with the right upon application to the superintendent of municipal services to set such poles or other equipment on new facilities constructed by the grantee. The superintendent of municipal services will not unreasonably refuse permission for such construction, however, a nonproliferation of poles policy for aesthetic purposes may be considered.

(b) Any franchise granted under this article shall apply to all areas currently serviced by a grantee and also include any areas to be serviced by a grantee in the future which are within the boundaries constituting the city.

(c) The city shall require all developers of future subdivisions, when making provisions for or restrictions of utilities in the subdivision plat, to include cable television services. It is intended by this subsection to include cable television in the same class of public utilities for the limited purpose of ensuring access to a grantee's cable television services for the inhabitants of such future subdivision.

(Code 1986, § 15.02, Ord. 2014-02)

**Sec. 118-34. Conditions of franchise.**

A grantee under this article shall be subject to the following restrictions and conditions with regard to the operation of the system, which conditions and restrictions shall be in addition to any other sections of this article or this Code:

(1) Cables, wires and other equipment in connection with a grantee's system shall be installed and operated under the public rights-of-way in underground conduit and equipment of the existing utilities within the city and its successors or assigns where conduits exist and where space in installed conduits is available. Installation of any additional poles, conduit or other equipment for the installation of cables, wires and other overhead equipment and underground equipment in public rights-of-way in connection with a grantee's system shall be subject to the authorization of the city or its designated representative. In reaching a decision as to such additional poles or equipment, the suggestions, if any, of the utility companies servicing or planning to serve such area may be considered. Underground installations shall always be

preferred, provided, however, the grantee may construct its plant aerially so long as there is one utility aerial.

(2) All wires, cables and other underground or overhead equipment shall be located as may be required of telephone companies or power lines by the public service commission. All equipment shall be grounded in the same manner as required by the state electrical code for electrical services existing on the date of installation of any equipment.

(3) A grantee under this article shall pay all costs incurred by the city in the event of the necessity of restoration of the public rights-of-way as a result of a grantee's construction of its system or its operation. Each grantee and the city shall coordinate the restoration of the public rights-of-way if it becomes necessary for a grantee to open or otherwise disturb such public rights-of-way.

(4) A grantee under this article shall at its own expense protect, support, temporarily or permanently disconnect, relocate in the same public right-of-way or remove from any public right-of-way any property owned or used by such grantee if required by the city for reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines and tracks or any other type of structures or improvements by governmental agencies when acting in the reasonable exercise of its police powers. The city shall provide a grantee notice of its intentions to make changes which might otherwise cause such grantee expense pursuant to this subsection and such grantee shall have the opportunity to be heard at a public hearing in such regard.

(5) A grantee under this article shall, upon the request of any person holding a building moving permit issued by the city, temporarily raise or lower its lines or disconnect or take them down to permit the moving of buildings. The expense of such removal, raising or lowering of wires shall be paid by the person requesting such removal, raising or lowering of wires, and such grantee shall be given reasonable notice to arrange for such temporary wire changes.

(6) All installations by a grantee of cables and incidental equipment shall comply in all respects with all laws, ordinances, rules and regulations of the Federal Communications Commission, the state or any agency or department thereof and of the city or any agency or department thereof now or hereafter in effect.

(7) A grantee under this article shall provide and maintain equipment in such condition and of such quality so that none of its service will adversely affect radio and television reception.

(8) Installation and maintenance of equipment shall be such that standard color signals shall be transmitted with reasonable fidelity to all subscribers.

(9) A grantee under this article shall not directly or indirectly require or solicit of any subscriber the patronage of any designated person or company engaged in the servicing or repair of television receivers. This subsection shall not apply to the sale, repair or adjustment of equipment which is part of the system of such grantee or which is necessary to receive the services of such grantee.

(10) A grantee under this article shall submit to technical inspections by authorized personnel of the city and shall make available to such inspectors or authorized personnel its facilities and equipment, wherever situated. The city reserves the right to enact in the reasonable exercise of its police powers further regulations regarding the installation and maintenance of the facilities of such grantee.

(11) A pole lease rate schedule with the city power utility will apply for the term of the agreement.

(12) A grantee under this article shall have the authority to trim trees upon and overhanging the public rights-of-way of the city so as to prevent the branches of such trees from coming in contact with the wires and cables of such grantee, except that, at the option of the city, such trimming may be done by it or under its supervision and direction and at its expense. Before a grantee trims any trees, reasonable notice shall be given to the city.

(13) Neither the granting of any franchise nor any provision governing the franchise shall constitute a waiver or bar to the reasonable exercise of any governmental right or police power of the city.

(14) The city reserves the right, during the life of any franchise granted under this article, to inspect all construction or installation work performed subject to the provisions of this article and to perform network measurements to ensure compliance with the terms of this article.

(15) Reasonable written notice shall be given to the city prior to the date of any construction work by a grantee under this article, which notice shall specify the location and extent of such construction and the type of facilities to be installed; provided, however, that this provision shall not apply to the installation of basic service to individual customers.

(16) No privilege or exemption shall be inferred from the granting of any franchise under this article, unless it is specifically prescribed.

(17) A grantee under this article shall at all times make and keep at an office maintained by such grantee a list of all complaints and interruptions or degradation of service received or experienced during the preceding year. The records maintained pursuant to this subsection shall also include the complaint response time and service restoral period and shall be continuously open to inspection, examination or audit by any authorized representative of the city.

(18) The city reserves the right, during the life of any franchise granted under this article, to have access at all normal business hours, and upon the giving of reasonable notice, to a grantee's engineering plans and service records relating to the operations of a grantee within the city, and to other appropriate records, including accounting and financial data, to the extent such access is required to verify the accuracy of franchise fee payments made pursuant to section 118-39, required to be kept under this article. Nothing contained in this subsection shall permit the city's review of documents relating to proprietary interests not related to a grantee's operation under this article.

(19) While any franchise granted under this article grants operational rights to a grantee covering the entire area within the boundaries of the city, a grantee shall provide notice to the city whenever an expansion of the system beyond the franchise area at the date of this article is contemplated. A grantee is not required to expand services to areas with a residential dwelling unit density of less than 30 units per mile. However, should dwelling unit density levels reach the 30 units per plant mile requirement, the city may request that a grantee extend services to the areas meeting the density requirements and a grantee must then honor such requests. (Code 1986, § 15.03)

#### **Sec. 118-35. Transfer or sale of franchise.**

A franchise granted under this article may not be transferred, assigned or sold, except among entities owned or controlled by a grantee, without the written consent of the city. Such consent will be given only if the transferee, assignee or purchaser agrees in writing to be subject to all the terms and conditions of this article. A grantee shall notify the city at least 60 days before a subject proposed transfer, assignment or sale is to take effect. Such a notice must be in the form of a written request to the city clerk-treasurer, stating the reasons why such an assignment is contemplated and detailing the expected changes in the operation of the system. Information regarding the legal, character, financial, technical and other qualifications of the party to whom a franchise is to be transferred, assigned or sold and/or operated shall also be provided. This section shall apply to any transfer, assignment or sale of 50 percent or greater of the ownership, operation or management of a grantee's system. The city shall not withhold approval or consent regarding the transfer, assignment or sale without cause and unless it is shown that the operation or management of the system will be affected to the detriment of the public by approving such transfer, assignment or sale. This provision shall not apply to either the mortgage or hypothecation of the system in respect to any mortgages or the remedies therein.

(Code 1986, § 15.04)

#### **Sec. 118-36. Franchise term, review and renewal.**

(a) The term of any franchise granted under this article shall be for a period of 15 years and the franchise shall be in full force and effect for such term subject to the provisions of this article.

(b) Every two years from the commencement of operations, during the month of January, at a regular or special meeting of the city, the city and a grantee under this article, at either party's option, may meet to discuss application of new technologies, system performances, customer complaints and judicial and FCC rulings affecting the operation of the system.

(c) At the beginning of the 12th year, a franchisee or, if mutually agreed by the city and the grantee during one of the review sessions described in subsection (b) of this section, the city and the grantee shall consider extension of the franchise for 15 additional years. The purpose of this provision is to allow for maximum flexibility in financial planning on the part of a grantee and for the city in anticipating future services. It is further the purpose of this provision to encourage

the city to examine a grantee's performance and to plan for the future in providing cable television services as well as to reward the satisfactory performance of a grantee. The city may at any time reward a grantee for satisfactory performance by the extension of the franchise for five-year increments. This authority is granted so as to provide incentive to a grantee for satisfactory performance and maximum service. The city shall within 90 days of the conclusion of such review session provide a determination as to whether the franchise should be extended as to a grantee. If the city decides not to extend the franchise, a grantee, upon request, will receive a report as to why the franchise was not extended. This subsection shall not serve as a waiver of any other extension or renewal procedures or standards otherwise available to a grantee or the city pursuant to applicable federal, state or local law, statute or precedent.  
(Code 1986, § 15.05)

**Sec. 118-37. Revocation, termination or expiration of franchise.**

(a) *Circumstances under which franchise may be terminated.* The city reserves the right to revoke or terminate any franchise granted under this article and rescind all rights and privileges associated with the franchise in the following circumstances:

(1) If a grantee should default in the performance of any of its material obligations under the franchise and fails to cure the default within 30 days after receipt of written notice of the default from the city.

(2) If a petition is filed by or against the grantee under the Bankruptcy Act or any other insolvency or creditor's rights law, state or federal, and a grantee shall fail to have it dismissed within a reasonable time.

(3) If a receiver, trustee or liquidator of a grantee is applied for by a grantee or appointed for all or part of its assets.

(4) If a grantee makes an assignment for the general benefit of creditors.

(5) If a grantee should violate any orders or ruling of any regulatory body having jurisdiction over a grantee, unless such violation is for the provision of additional service or unless the grantee is lawfully contesting the legality or applicability of such order or ruling.

(6) If a grantee fails to receive any required governmental certifications, unless such cause is directly attributable to an action or condition imposed by the city.

(b) *Hearing; notice to remedy cause.* Upon the occurrence of any of the events listed in subsection (a) of this section, the city may, after hearing, upon 30 days' written notice to a grantee citing the reasons alleged to constitute cause for revocation, set a reasonable time in which a grantee must remedy the cause. If during the 30-day period the cause shall be cured to the satisfaction of the city, the city shall declare the notice to be null and void. If a grantee fails to remedy the cause within the time specified, the city may revoke the franchise. In any event, before a franchise may be revoked or terminated, a grantee must be provided with an opportunity to be heard before the city.



(c) *Removal of grantee's property.*

(1) Should a grantee's franchise be revoked, terminated or expire and there is no judicial or administrative review of the revocation, termination or expiration taking place, such grantee shall begin removal within 90 days of revocation, termination or expiration of all property owned by it and/or placed on a public right-of-way, unless permitted by the city to abandon such property in place or unless proceedings begin to transfer such property to a purchaser.

(2) In removing its plant, structures and equipment, a grantee shall refill at its own expense any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to the grantee's removal of equipment and appliances, without affecting electric or telephone cables, wires or attachments. The city shall inspect and approve the condition of the public ways and public places and cables, wires, attachments and poles after removal.

(3) If a grantee fails to comply with the removal of its system required by this subsection following revocation, termination or expiration of its franchise or to complete any work required by city law or ordinance within the time established and to the satisfaction of the city, the city may cause such work to be done and such grantee shall reimburse the city the costs thereof within 30 days after receipt of an itemized list of such costs.

(Code 1986, § 15.06)

**Sec. 118-38. Subscriber rates and charges.**

(a) Monthly rates set by a grantee under this article for services shall be fair and reasonable and calculated to offset all necessary costs for provision of the service, including a fair rate of return on its investment devoted thereto under efficient and economical management.

(b) A grantee under this article agrees that monthly rates imposed on the City of Evansville subscribers will never be higher than those imposed on the City of Janesville subscribers. A grantee further agrees to abide by 47 USC 542 and all other federal laws and/or other federal agency rules and regulations regarding monthly rates.

(c) For the sole purpose of customer information, a grantee agrees to give the city reasonable notice of any rate, fee and/or charge modification.

(Code 1986, § 15.07)

**Sec. 118-39. Franchise fee.**

A grantee under this article shall pay to the city an annual franchise fee of five percent of the grantee's gross subscriber receipts from the operation of the cable communications system within the city boundaries. Such annual sum shall be paid within 45 days of the end of the calendar year or other applicable fiscal year; provided, however, that such grantee shall have provided the city with notice of any change in its fiscal year. When a grantee makes payment, it shall also provide certified financial statements prepared by a certified public accountant or an independent auditor

retained by a grantee at its own cost. Such verification shall also be subject to the reservations of rights contained in section 118-34(18). The purpose of the requirement of a certified financial statement is to verify the amount of gross subscriber receipts. Such fee shall be used to offset the administrative and regulatory cost incurred by the city with respect to the system and shall be in lieu of all other city permits and fees, but shall not be in lieu of municipal property taxes, other state, county or local taxes or any other payment owed to the city.  
(Code 1986, § 15.08)

**Sec. 118-40. Technical standards.**

(a) The cable television system permitted to be installed and operated under this article shall be operated in minimum conformance with the FCC's technical standards as stated in 47 CFR 76.601 et seq., and all other relevant federal, state or local regulations.

(b) A grantee under this article shall continue throughout the term of the franchise to maintain the technical standards and quality of service set forth in this section. Should the city reasonably find by resolution that a grantee has failed to maintain these technical standards and quality of service and should it by resolution specifically enumerate improvements to be made, such grantee shall make such improvements.

(c) The cable system shall initially carry and deliver to the subscribers all of the signals as provided for in a grantee's application, subject to the reasonable availability of such signals at time of launch or activation of the system.

(Code 1986, § 15.09)

**Sec. 118-41. Subscriber complaints.**

A grantee under this article shall investigate all complaints within 24 hours of their receipt and shall in good faith attempt to resolve them within 48 hours after notice. A grantee shall maintain a record of each complaint and shall maintain such record as provided for in this article. A grantee shall maintain a toll free telephone listing for the city subscribers for such purposes.

(Code 1986, § 15.10)

**Sec. 118-42. Liability insurance; indemnification of city.**

(a) A grantee under this article shall maintain and by its acceptance of any franchise granted under this article agrees that it will maintain throughout the term of the franchise a general comprehensive liability insurance policy against liability for loss or damage for personal injury, death or property damage, occasioned by the operations of such grantee under any franchise granted under this article, in the amounts of:

(1) Five hundred thousand dollars for bodily injury or death to any one person, within the limit, however, of \$1,000,000.00 for bodily injury or death resulting from any one accident.

(2) Five hundred thousand dollars for property damage resulting from any one accident.

(b) It shall be expressly understood and agreed by and between the city and any grantee under this article that such grantee shall save the city and its agents and employees harmless from and against all claims, damages, losses and expenses, including attorneys' fees, sustained by the city on account of any suit, judgment, execution, claim or demand whatsoever arising out of, but not limited to, copyright infringements, and all other damages arising out of the installation, operation or maintenance of the cable television system authorized under this article, whether or not any act or omission complained of is authorized, allowed or prohibited by this article and any franchise granted under this article. This provision shall not apply to acts of the city, its agents or employees.

(c) The insurance policies mentioned in subsection (a) of this section shall contain endorsements stating that the policies are extended to cover the liability assumed by such grantee under the terms of this article and shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be cancelled nor the amount of coverage thereof reduced until 30 days after receipt by the City Clerk of the City of Evansville by registered mail of a written notice of such intent to cancel or reduce the coverage."

(d) All written evidence of payment of required premiums shall be filed and maintained with the city during the term of any franchise granted under this article or renewal thereof.  
(Code 1986, § 15.11)

#### **Sec. 118-43. Quality of service.**

(a) The system of any grantee under this article shall be operated and maintained so that all subscribers will receive signals of good technical quality and access to the full range of services available from such grantee in the city. Any complaints as to the quality of the signals or services shall be promptly investigated by such grantee and adjustments required to correct situations disclosed by such investigations shall be made as provided for in this article.

(b) All installations shall be of a durable nature and installed in accordance with good engineering practices and comply with all existing and future ordinances, resolutions, regulations and orders of the grantor so as not to interfere in any manner with the rights of the public or individual property owners. The system shall not interfere with travel on and use of public places or facilities by the public and during the construction, repair, or removal thereof shall not obstruct or impede traffic.

(c) The system and any facilities utilized in connection therewith, either on public or private property, shall be installed and operated in such a manner as not to cause interference with the operation of any public safety radio station or systems operated by the city. Should any such interference develop, the city may require that any such interfering operations of a grantee under the franchise be immediately suspended and not resumed until the cause of interference has been corrected to the satisfaction of the city.

(d) The technical standards, including measurements of the construction and system to be operated in the city, shall comply with the minimum standards established by the Federal Communications Commission.  
(Code 1986, § 15.12)

**Sec. 118-44. Compliance with state and federal regulations.**

A grantee under this article shall comply with all conditions imposed by the FCC and/or by the state. Failure to obtain required licenses or to comply with all such conditions shall be grounds for revocation of the franchise. Such revocation will occur without liability assigned to the city. (Code 1986, § 15.13)

**Sec. 118-45. Subscriber privacy.**

A grantee under this article, the city or any other person shall not initiate or use any form, procedure or device for procuring information or data unrelated to the operation or maintenance of the system or distribution of services from subscribers' terminals by use of the cable system without prior authorization from each subscriber so affected. Valid authorization shall mean approval from the subscriber for a period of time not to exceed one year, and such authorization shall not have been obtained from the subscriber as a condition of service. (Code 1986, § 15.14)

**Sec. 118-46. Switching device and channel lock.**

A grantee under this article shall make available switching devices as are necessary to permit a subscriber to use the subscriber's own antenna. A grantee shall also provide a channel lock to enable the subscriber to control viewing. A grantee may charge for such devices. (Code 1986, § 15.15)

**Sec. 118-47. Provision of service to government buildings.**

If the service is provided within 300 feet of such building or facility, a grantee under this article shall provide a free one-time connection to the following government buildings and/or facilities: all public schools and all municipal buildings. (Code 1986, § 15.16)

**Sec. 118-48. Unauthorized connections to or modifications of system.**

(a) No person, without the expressed consent of a grantee under this article, shall make any connection, extension or division, whether physically, acoustically, inductively, electronically or otherwise, with or to any segment of such grantee's cable system. It shall further be illegal for any person, without the expressed consent of such grantee, to possess or receive any signals or transmissions of such grantee's cable system through the use of other facilities, devices or appurtenances used for the purpose of avoiding payment of fees for such transmissions, including specifically the transmission of messages or programming over the cable system on a pay channel or pay-per-program basis. This shall include, but is not limited to, tampering with cable converters.

(b) No person shall sell or solicit for sale any facilities, devices or appurtenances used for the purpose of any or all acts unlawful as provided by subsection (a) of this section.

(c) No person shall willfully interfere with, tamper with, remove or obstruct or damage any part, segment or content of a cable television system for any purpose whatsoever.

(d) Any person convicted of a violation of this section shall for each offense forfeit a sum not less than \$100.00 and not more than \$500.00, together with costs of such prosecution; provided, however, that the minimum and maximum sums are adjustable pursuant to any state and/or federal law or regulations covering such matters. Violation of this section shall be considered a separate offense for each 24-hour period the violation continues following notification or discovery.

(Code 1986, § 15.17)

**Sec. 118-49. City's right of intervention.**

The city shall have the right to intervene and a grantee under this article specifically agrees by its acceptance of a franchise not to oppose such intervention by the city in any suit or proceeding to which such grantee is a part.

(Code 1986, § 15.18)

**Sec. 118-50. Preferential or discriminatory practices prohibited.**

(a) A grantee under this article shall establish and maintain a nondiscriminatory policy providing that no individual shall be discriminated against with respect to compensation, terms, conditions or other privileges or employment because of race, color, marital status, religion, sex, national origin, handicap or age.

(b) A grantee under this article shall not refuse cable television service to any person who requests such service for lawful purposes if the grantee has legal access to the premises to be served.

(Code 1986, § 15.19)

**Sec. 118-51. Compliance with applicable regulations.**

This article and any franchise granted pursuant to this article shall at all times be subject to and the parties shall comply with applicable federal, state and local laws, statutes and/or the precedents of courts of competent jurisdiction.

(Code 1986, § 15.20)

**ARTICLE III. WIRELESS COMMUNICATION FACILITIES AND MOBILE TOWER  
CITING<sup>5</sup>**

**Sec. 118-52. Mobile Tower Siting Permit Ordinance.**

**Secs. 118-53--118-80. Reserved.**

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<sup>5</sup> **Cross references:** Utilities, ch. 126.

## **Sec. 118-81. Mobile Tower Siting Permit**

- (1) **Purpose.** The purpose of this Ordinance is to regulate by permit, (1) the siting and construction of any new mobile service support structure and facilities; (2) with regard to Class 1 collocation, the substantial modification of an existing support structure and mobile service facilities; and (3) with regard to a Class 2 collocation, the collocation on an existing support structure which does not require the substantial modification of an existing support structure and mobile service facilities.
- (2) **Authority.** The Common Council has specific authority under sec. 60.61 and 66.0404, Wis. Stats., to adopt and enforce this Ordinance.
- (3) **Definitions.** All definitions contained in sec. 66.0404(1) are hereby incorporated by reference.
- (4) **Building Permit.** No owner shall, within the City of Evansville, construct any new or collocation Class 1 or Class 2 mobile service transmission tower until a permit shall have first been obtained from the City.
- (5) **Class 2 Collocation.**

(1) **Application.** A Class 2 collocation is a permitted use. If an applicant submits to the City an application for a permit to engage in a class 2 collocation, the application shall contain the following: (1) name and business address of, and the contact individual for, the applicant, (2) the location of the affected support structure, and (3) the location of the proposed mobile service facility. A fee as set by resolution of the Common Council but not to exceed five-hundred dollars (\$500.00) or other monetary amount as set by sec. 66.0404(4)(d), Wis. Stat., shall also be submitted with the application. After such information is obtained, the application shall be considered complete. If any of the required information is not in the application, the City shall notify the applicant in writing, within five (5) days of receiving the application, that the application is not complete. The written notification shall specify in detail the required information that was incomplete. An applicant may resubmit an application as often as necessary until it is complete.

(2) **Determination.** A Class 2 collocation is subject to the same requirements for the issuance of a building permit to which any other type of commercial development or land use development is subject in the City Zoning Ordinances. Within forty-five (45) days of its receipt of a complete application, the City shall complete all of the following or the applicant may consider the application approved, except that the applicant and the City may agree in writing to an extension of the forty-five (45) day period:

1. Make a final decision whether to approve or disapprove the application.

2. Notify the applicant, in writing, of its final decision.
3. If the application is approved, issue the applicant the relevant permit.
4. If the decision is to disapprove the application, include with the written notification substantial evidence which supports the decision.

(3) A party who is aggrieved by the final decision of the City may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.

**(6) Class 1 Collocation and New Construction.**

(1) **Conditional use permit.** A conditional use shall be allowed only after approval by the City and issuance of a conditional use permit (hereafter “CUP”), in accordance with the procedures listed in (2)-(6).

(2) **Application.** An applicant shall submit to the City Clerk, a Conditional Use Permit application, or similarly named document, as available at the office of the City Clerk, along with the following information:

- i. The name and business address of, and the contact individual for, the applicant.
- ii. The location of the proposed or affected support structure.
- iii. The location of the proposed mobile service facility.
- iv. If the application is to substantially modify an existing support structure, a construction plan which describes the proposed modifications to the support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling, and related equipment associated with the proposed modifications.
- v. If the application is to construct a mobile service support structure, a construction plan which describes the proposed mobile service support structure and the equipment and network components, including antennas, transmitters, receivers, base stations, power supplies, cabling and related equipment to be placed on or around the new mobile service support structure.
- vi. If the application is to construct a new mobile service support structure, an explanation as to why the applicant chose the proposed location and why the applicant did not choose collocation, including a sworn statement from an individual who has responsibility over the placement of the mobile

service support structure attesting that collocation within the applicant's search ring would not result in the same mobile service functionality, coverage, and capacity, is technically infeasible, or is economically burdensome to the mobile service provider.

- vii. An application fee as set by resolution of the Common Council but not to exceed three thousand dollars (\$3,000.00), or other monetary amount as set by sec. 66.0404(4)(d), Wis. Stat.

**(3) Application Complete.** The City shall provide written notice to the applicant as to the completeness of the application within ten (10) days of receipt of said application by the City. If the application is deemed incomplete by the City, said notice shall specifically describe additional application materials required by the City. The applicant may resubmit an application as often as necessary until it is complete.

**(4) Application Review.**

- a. Upon receipt of the CUP application from the applicant, the Clerk shall provide notification by postal mail to the parties of interest, and all land owners and the clerk of any local government unit within one thousand (1,000) feet of the lot identified for the conditional use in the application, and shall publish a Class 2 Legal Notice, in accordance with Sec. 985, Wisconsin Statutes, listing the time and place of a public hearing at which the CUP application will be reviewed by the Planning Commission, and the proposed conditional use and its location, with said postal mail notification post marked fourteen (14) days prior to said hearing.
- b. The Plan Commission shall review a CUP application for compliance with this Ordinance, at a public hearing within ninety (90) days of receipt of a complete application in accordance with subsection (c) above, to ensure said application is in accordance with all applicable aspects of the City's Building Code and Zoning Ordinances. A Class 1 collocation or new structure is subject to the same requirements for the issuance of a building permit to which any other type of commercial development or land use development is subject in the City's Zoning Ordinances.

**(5) Recommendation and Action.** After review, the Planning & Zoning Committee shall take action at a public hearing no later than ninety (90) days from the date which the applicant was notified that the application was complete to approve, approve with conditions, or deny with substantial evidence the CUP application. However, the applicant and the City may agree in writing to an extension of the ninety (90) day period.

**(6) Issuance or Denial Notification.**



- (a) The applicant shall be notified, in writing, of the final decision of the Plan Commission. If the Plan Commission's decision is to disapprove the application, a written notification with substantial evidence which supports such decision shall be sent to the applicant.
  - (b) The Plan Commission may disapprove an application if an applicant refuses to evaluate the feasibility of collocation within the applicant's search ring and provide the sworn statement described in subsection (7)(b)vi.
  - (c) If an applicant provides the City with an engineering certification showing that a mobile service structure, or an existing structure, is designed to collapse within a smaller area than the setback or fall zone area required in the Zoning Ordinances, then the Zoning Ordinance does not apply to such a structure unless the City provides the applicant with substantial evidence that the engineering certification is flawed.
  - (d) A party who is aggrieved by the final decision of the Plan Commission may bring an action in the circuit court of the county in which the proposed activity, which is the subject of the application, is to be located.
- (7) **Violation.** Any person, partnership, corporation, or other legal entity that fails to comply with the provisions of this Ordinance shall be subject to the penalties in the City's Zoning Ordinance.
- (8) **Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

(Ord. 2016-06)